



# DEPARTMENT OF JUSTICE

## **Policy on Accommodating Differences in the Workplace**

**Prepared by the Human Resources Policy and  
Planning Unit**

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## I. Policy Statement

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The Department of Justice will establish and maintain an effective system to ensure an inclusive workplace and provide workplace accommodation in a timely, sensitive manner. The Department will also ensure that its corporate activities, including those that result in policies, practices, procedures, procurements and use of facilities, do not result in discrimination.

This policy sets out the requirements and procedures for the accommodation of **all** employees and prospective employees who have needs for accommodation for all grounds in the *Canadian Human Rights Act* and the *Employment Equity Act*, whether based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for which a pardon has been granted. The goal of this policy is to find a way to remove barriers that may prevent certain employees from maximizing their contribution as productive members of the Department of Justice.

This policy also reflects the Department's responsibility to not only respond to requests for individual accommodation, but also to look closely at all corporate programs and activities, including policies, practices, rules, standards, procurements and decisions relating to real property and to do all it can to eliminate potential discriminatory barriers within them.

## II. Application

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This policy applies to all current employees, both term and indeterminate, as well as prospective employees. Applicants for positions at the Department of Justice will be advised that the Department has an accommodation policy, which includes providing accommodation for tests and interviews and any other practices applicable to the selection process. However, inquiries about the need for accommodation necessary to perform the work should be made only after a job offer has been made to the candidate. A requirement for accommodation will not be used when evaluating the merits of candidates. Prospective employees are not obligated to inform the employer about their accommodation needs prior to being hired.

### III. The Policy

#### Part 1: Introduction

##### i. Department of Justice: Workplace Accommodation

The Department of Justice policy on workplace accommodation addresses our responsibilities under the *Employment Equity Act* and the *Canadian Human Rights Act* which states that it is unlawful to discriminate on the grounds of sex, race, national or ethnic origin, colour, religion, age, sexual orientation, marital status, family status, disability or conviction for which a pardon has been granted in addition to anyone protected under section 15 of the *Canadian Charter of Rights and Freedoms*.

The Department of Justice values its employees and their individual contributions to the department's work and demonstrates this by its commitment to and active support of the principles set out in this policy. This policy also affirms that the essence of equality is the acceptance and accommodation of differences.

This policy promotes first and foremost a recognition of the Department's commitment to an accessible and non-discriminatory environment. This can be accomplished in part by developing a process by which employees and potential employees can seek appropriate accommodation for their individual needs. It also aims to remove workplace barriers, thereby allowing all employees or potential employees the same opportunities to contribute.

##### ii. What is Accommodation?

The concept of accommodation arose out of human rights jurisprudence and is reflected in three primary instruments: *the Charter* (equality rights), *the Canadian Human Rights Act* and *the Employment Equity Act*.

Accommodation requires an individual assessment of the needs of the employee making the request. In some cases, where the needs of individuals are similar to those of others, it may be possible to establish general policies or practices to accommodate those needs. The duty to accommodate may require:

- ◆ changing work rules, practices, and terms and conditions of employment to meet the specific needs of the affected individual or group;
- ◆ an alteration in work schedules or special job support, equipment or assistance; or
- ◆ a change in job duties.

What is necessary must be decided with all the relevant parties' input: the employee and the employer. Unions/employee representatives can also play an important role.

Some cost may be incurred by the employer, for example changes to the physical environment or special equipment; however, the duty to accommodate does not create an endless obligation on the employer. The ability to accommodate ends with undue hardship<sup>1</sup> or when significant financial costs or health and safety issues render this accommodation impossible. Where costs are involved, ordinarily the accommodation would be financed through the budget of the section, Facilities Management, or through the departmental central budget for technical aids administered by the Employment Equity Section of the Human Resources Directorate where applicable.

### iii. Types of Accommodation

Accommodation does not only stem from individual requirements. The Supreme Court recently clarified the need for employers to do all they can, up to the point of undue hardship, to ensure that all their corporate activities take into account the needs of a diverse workforce.

This means that employers should be proactive and look closely at all their corporate programs and activities, including policies, practices, rules, standards, procurements and decisions related to real property, and do all they can to eliminate potential discriminatory barriers within them. For example, procurement decisions for new communication technology should ensure the technology is fully accessible for people with a wide range of disabilities, or has compatible interfaces to allow for access. Individual accommodation requirements can range from simple, informal arrangements to begin work early or late, to take off specific days, to make changes in the physical office environment or to provide technical aids or sign language interpretation to an applicant with a disability. Each accommodation is likely to be different because it is based on job requirements and individual circumstances and tailored to individual needs. Some accommodation may be obvious and others will require creativity and exploration of various options. Some will be temporary, some will be permanent and others may need to be changed from time to time.

Members of religious groups whose holy days are not statutory holidays are entitled to take off those days from work. The Treasury Board policy concerning *Leave with Pay for Religious Observance* requires managers to examine each request individually and make every effort to permit absence without loss of income, within the terms of the collective agreement, if appropriate. Annual leave, compensatory, shift exchanges, compressed workweek or make-up time, if operationally feasible, are available as options. Religious customs and customs connected with a person's national or ethnic origins must be accommodated.

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<sup>1</sup> The following considerations should be taken into account when making decisions about the likelihood of undue hardship arising: the nature and cost of the accommodation as assessed in the context of the size and financial situation of the employer as a whole; and, safety and/or health risks, if any, and who bears them. It should be noted that in the case of government departments and agencies, it is highly unlikely that the test for undue hardship will be met solely by demonstrating there are not adequate funds to provide an accommodation.

Employees and applicants with different abilities are entitled to the necessary job support, equipment and assistance to the point of undue hardship for the employer. As any specific disability has within it a large range of specific manifestations, it is impossible to determine whether any one solution will be effective for all individuals with a particular disability. Individuals with disabilities are clearly the best experts on their own individual requirements and the solution will remain individual to each employee and circumstances. Although the individual circumstances will dictate the solutions required, some examples could include adjusting the testing and/or interview process for applicants with disabilities, adjusting the physical work environment so that environmentally sensitive employees can remain co-located with their colleagues, providing work-related technical aids, use of *flexible work arrangements* as appropriate and task accommodation.

One specific form of different abilities is *environmental sensitivities*. Individuals with sensitivities are subject to a great range of circumstances, tolerances and sensitivities. Such individuals are entitled to aid in finding or developing individualized solutions beginning with adjusting the working environment wherever possible as well as telework and other appropriate options.

## **Part 2: Responsibilities**

### **i. The Department's Responsibilities**

The Department is committed to ensuring that policies, practices, procedures and facilities are barrier free by developing a process by which employees and potential employees can seek appropriate accommodation for their individual needs whether they be for religious, physical, family or personal reasons. The Department has an obligation to ensure that the buildings employees work in are safe and, to the extent possible, do not create or aggravate health problems. Accessibility, air quality, use of chemical products, lighting, and noise are important aspects of the work environment that impact on all of us. Even where building standards are adhered to there will remain individual cases where employees either cannot tolerate the conditions in a building or work area or where special modifications need to be made to the work place. These employees will require individual accommodation by managers.

To support managers and employees seeking accommodation and to avoid forcing managers and employees to reinvent the wheel with each accommodation request, **the Employment Equity Section of the Human Resources Directorate** will provide data on types of accommodation requests, information on accommodation options for various requests that have been tried in the Department or elsewhere within the Public Service, the resources available for financial assistance, possible experts to assist, and advice on the process to be followed. Unions and employee representatives can also play an important role in assisting with workplace accommodation and with building support for the elimination of workplace barriers.



## ii. Applicant's Responsibilities

A person making an enquiry or applying for a position who requires accommodation in relation to the selection process should be advised to direct their enquiry about accommodations to the applicable staffing advisor to let them know of their requirements as soon as possible.

## iii. Employee's Responsibilities

Employees have a right to reasonable accommodation under the law if faced with a barrier in the workplace that arises from factors such as race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for which a pardon is granted.

It is an employee's responsibility to inform managers of any particular needs and to fully co-operate in finding a workable solution. Accommodation can best be handled with the full participation of the employee in both the identification of the requirement(s) and, where possible, alternatives and solutions. Employees are also expected to be open to alternate suggestions and be flexible when considering proposals that effectively respond to their needs. However, accommodation can be a challenging area and employees may not always know about alternatives nor should it be their entire responsibility to research these. All requests for accommodation will be dealt with in a sensitive manner.

This will also extend to informing the manager when changes may be required and also where the accommodation is no longer required.

## iv. Manager's Responsibilities

Department of Justice managers have a responsibility for creating a workplace where each employee is able to make an optimal contribution to the office team, and to take steps to remove any barriers that exist to that contribution. Managers also need to know how to accommodate individual requirements of employees and who in the Human Resources Directorate or Facilities Management to contact for additional information and assistance in adapting the work environment where necessary (see contacts section of page 10). The manager is responsible for providing the required accommodation on a timely basis. For a new employee, accommodations should be completed prior to the employee's arrival. Should this not be possible, the employee's probationary period will be affected. Under the revised Public Service Employment Regulations effective March 31, 2000, a new provision has been added in respect of the probationary period for persons with disabilities who may require job accommodation. The provision sets out that, for the purpose of probation only, the date of appointment for persons with disabilities who require job accommodation will be the date on which the accommodation is made. Both managers and employees benefit from this change because *employees* will have the tools necessary to demonstrate their ability to do the job from the outset of the probationary period.

Managers must ensure that employees and applicants feel comfortable in requesting any necessary accommodation. Managers are also responsible for communicating to employees that diversity and difference are essential to the workplace of today.

After consulting with the affected employee and union representatives if applicable, managers should also consider whether it would be appropriate to hold an awareness session with the colleagues of that employee to provide background information, and, if necessary, involve them in the accommodation. This would be frequently the case where an employee with environmental sensitivities or allergies needs the co-operation of colleagues to be able to carry out their work. This of course would require the prior agreement of the affected employee.

Where the request for accommodation would result in changes to the workplace or physical accommodation, the manager must ensure that the Occupational Health and Safety Officer is contacted. The Employment Equity Section of the Human Resources Directorate may also have information on relevant expert assistance.

Managers must not make decisions on undue hardship without the advice of the Human Resources Directorate. These decisions require consideration of many factors, including collective agreements, labour law and human rights law.

## IV. Procedure for both Employee and Employer

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Some requests can be dealt with informally and in confidence, between employee and manager. However, it is important to capture accommodation requests and related measures to allow the Department to monitor implementation of the policy and build its capacity to respond to a variety of accommodation situations.

*For employees*, the first step is to advise your immediate manager of the nature of the requirement. For temporary or one time accommodation, you may only need to discuss the matter with your supervisor orally and make the appropriate arrangements.

You should make your request in writing to your manager if you:

- ◆ require long term, extensive accommodation or changes to the physical work space;
- ◆ require a flexible work arrangement as part of the accommodation (the Department's *Policy on Alternative Work Arrangements* calls for written applications in order to properly monitor the application of the policy);
- ◆ are a person with a disability and require any form of accommodation (see the Treasury Board *Policy on the Provision of Accommodation for Employees with Disabilities*).



In your request, you should give your manager an account of your needs. Describe the situation, what you need and include any information you may have to support your accommodation, such as instructions from your doctor, if applicable. This written request is not required as a matter of proof of your needs but to provide as much information as possible to assess what steps are necessary to accommodate those needs.

If you have a disability that will require some modification of the workplace, you should request that the Department's Occupational Health and Safety Officer be involved. This officer will be able to assist in making recommendations on the appropriate changes to the work area. The Employment Equity Section of the Human Resources Directorate may also have information on relevant expert assistance and direct you to the appropriate resource.

You should be prepared to identify and discuss possible solutions, the preferred options and, if experimenting is necessary, which option to proceed with first in an accommodation plan. Make an appointment with your manager and bring with you all the information you think would be helpful on your particular needs. Be prepared to discuss other ideas for possible solutions beyond your own, as the manager will have to consider the interests of other employees and the work requirements in working out with you the options to try.

You and your manager may decide to hold a workplace information session if you think the involvement and co-operation of your colleagues would be useful in supporting the accommodation plan.

*For managers*, you should discuss the employee's needs in a respectful and sensitive manner. Many employees will find it difficult to request accommodation or even to discuss matters they see as barriers in the workplace because of a concern that it will have a negative impact on their careers or worklife.

If the request does not affect any other employee and is within the authority of the manager, ordinarily the arrangement is made between the two.

- ◆ Where the request involves a temporary, intermittent schedule change for the employee that does not affect others, the request should normally be granted by the manager.
- ◆ Where the request involves a form of alternative work arrangement, the requirements of the Department's *Alternative Working Arrangements Policy* should be fulfilled.
- ◆ Where the request involves changes to the physical office environment, such as the replacement of furniture with older furniture, the purchase of a specialized machine or piece of equipment or the one-time removal of carpet and replacement of floor covering, ordinarily the request would be processed through the budget of the section, Facilities Management, or through the departmental central budget for technical aids administered by the Employment Equity Section of the Human

Resources Directorate where applicable. The Occupational Health and Safety Officer, the Facilities Management Division or the Employment Equity Section of the Human Resources Directorate may have information on successful physical office solutions. Information is also available on products available on the market, such as assistive devices and paint and floor coverings.

- ◆ Where the request involves a significant impact on other employees, for example where their workload would be increased by the accommodation, you may choose to either hold a discussion session in your unit to work out a collaborative solution if you and the employee believe that would be useful. Alternatively, you may use a more formal facilitated discussion process to come to an equitable solution. It would also be important to consult and collaborate with union/employee representatives if applicable. Use of temporary replacement staff should be considered where other employees have to take on additional work that cannot be balanced in some way which is acceptable to all involved.

All requests for accommodation should be forwarded to the employment Equity Section of the Human Resources Directorate.

## V. Recourse

If an accommodation request has been rejected and the employee is not satisfied with the response of the manager, union consultation and collaboration may be necessary, if applicable. The employee may notify the senior manager of the unit or the Sector Head for resolution. Senior managers must ensure that the policy has been properly applied where any request for accommodation has been denied. Employees may also seek redress through the grievance process as outlined in their collective agreement or terms and conditions of employment. Issues of safety or possible breaches of the Canada Labour Code should be dealt with under the requirements and procedures set out in the Code.

## VI. Monitoring

The Employment Equity Section of the Human Resources Directorate will monitor and evaluate this policy on an annual basis.

## VII. Communication

This policy will be communicated to all employees via InfoPersonnel and posted on the JusNet under the Human Resources Directorate, Employment Equity website. This policy will also be made available in alternative formats.

## VIII. Contacts

Employment Equity Section, Human Resources Directorate

Human Resources Operations, Human Resources Directorate

Facilities Management Division

Departmental Occupational Safety Officer

Treasury Board Secretariat, Job Accommodation Network Tel: 1 888 271-6378

TTY (613) 957-8657

<http://publiservice.tbs-sct.gc.ca/ee/eng/accommodation/accommodation.html>

EE Enabling Resource Centre for Persons with Disabilities Tel: (613) 943-2937  
Fax: (613) 992-9977  
TTY: (613) 992-9021  
[http://publiservice.gc.ca/hr/eeemp/program\\_overview/eeerc\\_2.htm](http://publiservice.gc.ca/hr/eeemp/program_overview/eeerc_2.htm)

## References

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Policy on Provision of Accommodation for Employees with Disabilities, Treasury Board Secretariat, July 1999:

[http://publiservice.tbs-sct.gc.ca/Pubs\\_pol/hrpubs/TB\\_852/ppaed\\_e.html](http://publiservice.tbs-sct.gc.ca/Pubs_pol/hrpubs/TB_852/ppaed_e.html)

Creating a Welcoming Workplace for Employees with Disabilities, Treasury Board Secretariat, January 2000:

[http://publiservice.tbs-sct.gc.ca/Pubs\\_pol/hrpubs/TB\\_852/cwwed\\_e.html](http://publiservice.tbs-sct.gc.ca/Pubs_pol/hrpubs/TB_852/cwwed_e.html)

Leave with Pay Policy (religious observance), Treasury Board Secretariat:

[http://publiservice.tbs-sct.gc.ca/pubs\\_pol/hrpubs/compensation/LWP1-1E.html#obj](http://publiservice.tbs-sct.gc.ca/pubs_pol/hrpubs/compensation/LWP1-1E.html#obj)

Policy on Alternative Working Arrangements, Department of Justice:

[http://dojnet/hrd\\_e/Comp&SR/AWA\\_pol.htm](http://dojnet/hrd_e/Comp&SR/AWA_pol.htm)

Department of Justice Grievance Procedures: [http://dojnet/hrd\\_e/Comp&SR/proc.htm](http://dojnet/hrd_e/Comp&SR/proc.htm)

Employment Equity Policy, Department of Justice: [http://dojnet/hrd\\_e/ee/policy.htm](http://dojnet/hrd_e/ee/policy.htm)

A Building Guide to the Department of Justice Headquarters:

<http://dojnet/building%5Fe/index.htm>

Employment Equity Act: <http://info.load-otea.hrdc-drhc.gc.ca/~weeweb/billc64e.htm>

Canadian Human Rights Act: <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/H/H-6.html>

Charter of Rights and Freedoms:

<http://www.pch.gc.ca/credo/english/charter/chartercontents.html>

Collective Agreements:

[http://publiservice.tbs-sct.gc.ca/Pubs\\_pol/hrpubs/coll\\_agre/siglist\\_e.html](http://publiservice.tbs-sct.gc.ca/Pubs_pol/hrpubs/coll_agre/siglist_e.html)

Canada Labour Code: <http://laws.justice.gc.ca/en/L-2/index.html>

LA Terms and Conditions of Employment (under review)

## Appendix A

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### Why Accommodate?

Increasingly, the business world has recognized the importance and value of a healthy, productive workforce. Providing the support employees need to continue to be motivated and productive is only good business sense. A supportive workplace for all increases employee morale with all the incidental benefits produced by this increase. Accommodation also means that our commitment to diversity is better realized.

There are still many arguments offered as reasons not to accommodate. The following expresses a few of these:



*Why would I need to proactively set up the workplace i.e, policies, programs, practices etc. so that no accommodation problems exist when no one has asked for special accommodations?*

The *Meiorin* decision has radically changed and broadened the way we deal with accommodation. While prior to this decision, it allowed individuals the ability to fully participate at work, participation was individualized i.e, the problem is of a particular individual, rather than one of society, namely to ensure inclusion. Rather than forcing employers to solve individual problems, some argued, that employers should be compelled to set their workplaces up in such a way that these problems do not exist in the first place, in much the same way that wheel chair ramps are now expected, rather than added as an after-thought when someone requires one.

That debate is over now and the proactive, broadened perspective is now the law.



*I can't afford to accommodate this employee. I don't have the funds in my budget.*

Cost is often cited as a reason not to accommodate. However, our own statistics demonstrate that the average cost for the accommodation of an employee is minimal. Many forms of accommodation have no cost impact at all. Funding assistance can also be made available centrally.

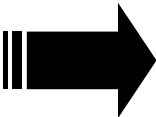
The Department is under a legal obligation to accommodate to the point of undue hardship. For example, there is no discretion to refuse the purchase of necessary equipment or modifications to the workplace necessary to enable employees with disabilities to carry out the essential functions of the job unless it would cause undue hardship. Accommodations



should be provided on a timely basis. For new employees, accommodations should be completed prior to the employee's arrival.

This argument also ignores the cost to the Department in terms of lost productivity from absenteeism or lowered employee morale where accommodation is not made.

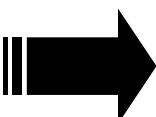
Some accommodation, particularly where equipment will have to be purchased for employees with disabilities, will be more expensive. Most managers will not have the knowledge or expertise in the range of accommodation possibilities and some problems will require creative options or several attempts before a workable solution is found. Managers should rely on the employee and, if required, the Employment Equity Section of the Human Resources Directorate or the EE Enabling Resource Centre of the Public Service Commission for assistance. In addition, managers must also be properly supported by senior management, departmental committees and others to address accommodation issues.



*This will set a precedent for other employees. Next, everyone will want something special. Don't I have to treat everyone the same to avoid the appearance of favouritism?*

Accommodation is based on the elimination of barriers to full participation in the workforce and is premised on the principle that equality means the recognition of differences. Everyone should be treated the same in terms of respect and trust but individual needs may require different treatment.

Not every employee will require some kind of accommodation and not all those requiring accommodation will need it on an ongoing basis. It may arise that the kind of accommodation needed will be temporary or a one-time accommodation cost or arrangement. Others will require a number of attempts to find the accommodation that works best. Most accommodation has to do with common sense, openness, flexibility and a willingness to find a workable solution on the part of both the employee and the manager.



*It is unfair to other employees to give one employee special treatment. Morale will suffer if I give special treatment to some and not others.*

Accommodation is not a favour or special treatment; it is a right under the law. It is not a lowering of standards but a recognition that individual circumstances may require some tailoring to support individual performance at the job. The accommodation requested by one employee may, in fact, benefit everyone, perhaps by improving the environment for all employees, by creating a new way of working that allows everyone who wishes to turn to flexible work arrangements, or by providing an open forum for employees and managers to explore better ways to work together.



*This office can't run without everyone being here all day, every day. We just can't meet our work demands if everyone isn't doing their share.*

Accommodation for an employee does not mean that they are not "doing their share". In fact, accommodating employees means that you have removed the barriers that could prevent them from leading fully productive worklives. Accommodation helps enable employees to participate as full members of the team.



*I can't ask other employees to stop wearing perfume, aftershave or other scented products. It's their right to wear what they want.*

It is part of every manager's role to build an effective team and this will include taking steps to discourage actions of other colleagues that impede another employee's work or health. In the same way that we deal with any harmful behaviour by colleagues, where we identify an impediment to the team or the work, we have an obligation to deal with it. It is also a manager's responsibility to ensure that departmental policies are adhered to.

In most cases, requesting the co-operation of colleagues will resolve the issue quickly. Employees should be reminded to comply with the duty to accommodate fellow employees disabled by environmental sensitivities by replacing their use of scented products with unscented ones and avoiding wearing perfume or aftershave or other scented products in the workplace.